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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,283	07/25/2003	Daniel G. Zwier	PermaLoc 4	4251

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EXAMINER

ALIMENTI, SUSAN C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,283

Applicant(s)

ZWIER, DANIEL G.

Examiner

Susan C. Alimenti

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MLW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 13 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-20 is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 12-13 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: New claims 12 and 13 are directed to a method, however the lawn edging strip of claims 1-11, and 14- 20 can be used in a materially different process of using that product, such as a children's toy (MPEP § 806.05(h)).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 12-13 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species or invention which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1, 2, 4, 6, and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chancellor (US 3,314,193).

Chancellor discloses the invention substantially as claimed except he does not positively refer to a lawn-edging strip. Chancellor's lawn edging assembly comprises first and second connector members S (Chancellor, Figure 7) and a fastener assembly comprising rivet 35 that fits into a hole or receiver and defining a pivot axis about rivet 35. The connector members are pivotally attached through the fastener assembly and infinitely adjustable between a first position where the longitudinal axis of both connectors are aligned and a second position where said axis are out of alignment. Said connectors are preferably made of a plastic or a similar type resin (Chancellor, col.3, lns.17-25). The connector members further comprise a stop 30 which is configured to limit movement of the lawn-edging strip (Chancellor, Figure 6). While Chancellor does not positively recite a lawn edging strip, the plurality of members S when attached together are considered to be a lawn-edging strip.

In the alternative, if one were to contend that Chancellor does not expressly disclose a landscape edging strip, the examiner takes Official Notice that it would have been obvious to one

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having ordinary skill in the art at the time the invention was made to use a unitary lawn edging strip with Chancellor's connecting members as an obvious design choice.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chancellor.

Chancellor discloses the claimed invention except the fastener assembly is not a single nut and bolt. Instead Chancellor utilizes a rivet and teaches that this hole and rivet pivot connection can be achieved by using any "suitable fastening device" (Chancellor, col.4, lns.59-63). Clearly a nut and bolt is a common and well-known fastening device that would provide a pivoting engagement. It would have been obvious to one having ordinary skill in the art to modify Chancellor's lawn-edging strip and connector by replacing the rivet with a nut and bolt since it is an art recognized equivalent fastening means and does not change the scope of the invention.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chancellor as applied to claim 1 above, and further in view of Richet et al. (US 2002/0189162 A1).

Chancellor discloses the claimed invention except it is not positively disclosed that the connecting members can be inclined 0-90° relative to one another's longitudinal axis. Richet et al. (Richet hereafter) discloses a similar lawn-edging strip and connector, having connector members 10 that pivot about axis point 28, 32 (Richet, Figure 7) to create a 90° angle in order to fit tightly around the corner of a building (Richet, Figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Chancellor's device capable of pivoting to a 90° angle in order to create sharp corners in an ornamental bed or to fit tightly around the corner of a building.

Response to Arguments

7. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

8. Claims 14-20 are allowed.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360.

The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA


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